

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>TAMMY KITZMILLER, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Civil No. 04-CV-2688</b>
	)	
<b>v.</b>	)	<b>Filed Electronically</b>
	)	
<b>DOVER AREA SCHOOL DISTRICT, et al.,</b>	)	<b>Hon. John E. Jones, III</b>
	)	
<b>Defendants.</b>	)	
	)	

**UNOPPOSED MOTION OF COURTROOM  
TELEVISION NETWORK LLC TO INTERVENE**

Courtroom Television Network LLC (“Court TV”) hereby moves this Honorable Court for leave to intervene pursuant to Rule 24(b) for the limited purpose of seeking leave to record and telecast the trial proceedings in this action. Copies of the Unopposed Motion of Intervenor Court TV for Leave to Record and Telecast Trial Proceedings, and the Memorandum in support thereof, are separately

bound as Exhibit 1 hereto.<sup>1</sup> The reasons supporting this unopposed Motion to Intervene are set forth in the accompanying Memorandum.

WHEREFORE, Court TV respectfully requests that the Court grant it leave to intervene for the limited purpose of seeking leave to record and telecast the trial proceedings in this action.

Dated: September 2, 2005

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

By: \_\_\_\_\_

*LS/*  
Lee Levine\*  
Gayle C. Sproul  
Michael Berry  
2112 Walnut Street, Third Floor  
Philadelphia, Pennsylvania 19103  
(215) 988-9778 (phone)  
(215) 988-9750 (facsimile)  
lee.levine@lskslaw.com  
gayle.sproul@lskslaw.com  
michael.berry@lskslaw.com

*Attorneys for Movant-Intervenor  
Courtroom Television Network LLC*

\* Petition for special admission filed on September 2, 2005.

---

<sup>1</sup> The unopposed Motion of Court TV to File a Brief Exceeding the Word Count Provided for in Local Rule 7.8(b)(2) is separately bound as Exhibit 2.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>TAMMY KITZMILLER, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Civil No. 04-CV-2688</b>
	)	
<b>v.</b>	)	<b>Filed Electronically</b>
	)	
<b>DOVER AREA SCHOOL DISTRICT, et al.,</b>	)	<b>Hon. John E. Jones, III</b>
	)	
<b>Defendants.</b>	)	
	)	

**MEMORANDUM OF COURTROOM  
TELEVISION NETWORK LLC IN SUPPORT  
OF ITS UNOPPOSED MOTION TO INTERVENE**

Pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, Courtroom Television Network LLC (“Court TV”) respectfully requests the Court’s permission to intervene in this matter for the limited purpose of seeking leave to record and telecast the trial proceedings in this action.

**STATEMENT OF FACTS**

Court TV is a national cable news network dedicated to comprehensive reporting on the legal and judicial systems of the United States, the fifty states, and the District of Columbia. Since its creation in 1991, Court TV’s cornerstone has been televising civil and criminal trials as they occur. In fact, it has televised over 900 trials and other judicial proceedings in its fourteen-year history. *See*

Declaration of Douglas P. Jacobs, ¶ 2, attached to the accompanying motion of Court TV for leave to record and telecast trial proceedings.

As is discussed more fully in Court TV's memorandum in support of its motion to record and telecast the trial proceedings, this case is now at the center of a great national debate. Indeed, it is hard to think of a case that implicates the public interest to a greater degree than this one, which raises important issues of public policy, including the education of children, the role of religion in public education and even the origins of life itself. No prurient interests would be advanced by televised coverage, there are no privacy concerns nor a jury to protect. To the contrary, this case is a defining example of the kind of judicial proceeding in which the gravity of its actual implications for the public matches the public's fervent interest in the proceeding itself.

The trial in this matter is scheduled to begin on September 26, 2005. Court TV seeks to intervene for the limited purpose of asking the Court to exercise its discretion under the Local Rules to permit Court TV to record and televise the trial in its entirety. The parties do not oppose this motion or the motion to record and televise the trial.

### **ARGUMENT**

Intervention pursuant to Rule 24(b)(2) is the appropriate vehicle for news organizations and other members of the press and public to vindicate their rights of

access to judicial proceedings. Rule 24(b)(2), which must be construed to “avoid[] exclusionary constructions,” *Advisory Committee Notes to 1946 Amendment*, authorizes a court to permit intervention when “an applicant’s claim or defense and the main action have a question of law or fact in common.” Courts have repeatedly ruled that in matters relating to access to trials and other judicial proceedings, Rule 24(b)(2) is the appropriate means through which such requests by the media are to be brought before the federal courts. *See, e.g., Shingara v. Skiles*, No. 05-2376, slip op. at 2, 4 (3d Cir. Aug. 24, 2005) (ruling on motion of non-party newspaper, which intervened pursuant to Rule 24(b), to challenge district court’s protective order) (attached as Exhibit 20 to the Declaration of Gayle C. Sproul (“Sproul Decl.”), which is attached to the accompanying motion of Court TV for leave to record and telecast trial proceedings); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 778 (3d Cir. 1994) (reversing trial court order denying news organizations’ request to intervene pursuant to Rule 24(b) in civil rights lawsuit brought against local government); *United States v. Antar*, 38 F.3d 1348, 1352 (3d Cir. 1994) (ruling on motion of news organizations that intervened in trial court proceedings to seek access to juror identities); *Dashner v. Riedy*, 2004 U.S. Dist. LEXIS 19980, at \*1 (E.D. Pa. Sept. 30, 2004) (stating that the court granted the motion of The Morning Call to intervene for the purpose of seeking access to sealed transcript of in camera testimony) (Sproul Decl., Ex. 21); *see also, e.g.,*

*Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n.25 (1982) (media and public ““must be given an opportunity to be heard”” on questions relating to access) (citation omitted); *Washington Post v. Robinson*, 935 F.2d 282, 284 (D.C. Cir. 1991) (newspaper successfully intervened to file motion seeking access to sealed records).

Thus, Rule 24(b)(2) provides the appropriate means for Court TV to bring before the Court its request for permission to televise the trial proceedings in this matter. *See, e.g., Hamilton v. Accu-Tek*, 942 F. Supp. 136, 137 (E.D.N.Y. 1996) (court grants motion of intervenor Court TV to televise courtroom proceedings); *Marisol A. v. Giuliani*, 929 F. Supp. 660, 660-62 (S.D.N.Y. 1996) (same); *Katzman v. Victoria’s Secret Catalogue*, 923 F. Supp. 580, 583, 589-90 (S.D.N.Y. 1996) (same).

**CONCLUSION**

For the foregoing reasons, Court TV respectfully requests leave to intervene and specifically requests permission to file the attached Unopposed Motion for Leave to Record and Telecast Trial Proceedings, and the Memorandum in support thereof, which explains in greater detail why the Court should exercise its discretion under Local Rule 83.1.1 to permit Court TV to televise the trial proceedings in this matter.

Dated: September 2, 2005

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

By: \_\_\_\_\_

Lee Levine\*

Gayle C. Sproul

Michael Berry

2112 Walnut Street, Third Floor

Philadelphia, Pennsylvania 19103

(215) 988-9778 (phone)

(215) 988-9750 (facsimile)

lee.levine@lskslaw.com

gayle.sproul@lskslaw.com

michael.berry@lskslaw.com

*Attorneys for Movant-Intervenor  
Courtroom Television Network LLC*

\* Petition for special admission filed on September 2, 2005.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TAMMY KITZMILLER, et al.,	)	
	)	
Plaintiffs,	)	Civil No. 04-CV-2688
	)	
v.	)	Filed Electronically
	)	
DOVER AREA SCHOOL	)	Hon. John E. Jones, III
DISTRICT, et al.,	)	
	)	
Defendants.	)	
	)	

**MEMORANDUM OF COURTROOM  
TELEVISION NETWORK LLC IN SUPPORT  
OF ITS UNOPPOSED MOTION TO INTERVENE**

Pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, Courtroom Television Network LLC (“Court TV”) respectfully requests the Court’s permission to intervene in this matter for the limited purpose of seeking leave to record and telecast the trial proceedings in this action.

**STATEMENT OF FACTS**

Court TV is a national cable news network dedicated to comprehensive reporting on the legal and judicial systems of the United States, the fifty states, and the District of Columbia. Since its creation in 1991, Court TV’s cornerstone has been televising civil and criminal trials as they occur. In fact, it has televised over 900 trials and other judicial proceedings in its fourteen-year history. *See*

Declaration of Douglas P. Jacobs, ¶ 2, attached to the accompanying motion of Court TV for leave to record and telecast trial proceedings.

As is discussed more fully in Court TV's memorandum in support of its motion to record and telecast the trial proceedings, this case is now at the center of a great national debate. Indeed, it is hard to think of a case that implicates the public interest to a greater degree than this one, which raises important issues of public policy, including the education of children, the role of religion in public education and even the origins of life itself. No prurient interests would be advanced by televised coverage, there are no privacy concerns nor a jury to protect. To the contrary, this case is a defining example of the kind of judicial proceeding in which the gravity of its actual implications for the public matches the public's fervent interest in the proceeding itself.

The trial in this matter is scheduled to begin on September 26, 2005. Court TV seeks to intervene for the limited purpose of asking the Court to exercise its discretion under the Local Rules to permit Court TV to record and televise the trial in its entirety. The parties do not oppose this motion or the motion to record and televise the trial.

### **ARGUMENT**

Intervention pursuant to Rule 24(b)(2) is the appropriate vehicle for news organizations and other members of the press and public to vindicate their rights of

access to judicial proceedings. Rule 24(b)(2), which must be construed to “avoid[] exclusionary constructions,” *Advisory Committee Notes to 1946 Amendment*, authorizes a court to permit intervention when “an applicant’s claim or defense and the main action have a question of law or fact in common.” Courts have repeatedly ruled that in matters relating to access to trials and other judicial proceedings, Rule 24(b)(2) is the appropriate means through which such requests by the media are to be brought before the federal courts. *See, e.g., Shingara v. Skiles*, No. 05-2376, slip op. at 2, 4 (3d Cir. Aug. 24, 2005) (ruling on motion of non-party newspaper, which intervened pursuant to Rule 24(b), to challenge district court’s protective order) (attached as Exhibit 20 to the Declaration of Gayle C. Sproul (“Sproul Decl.”), which is attached to the accompanying motion of Court TV for leave to record and telecast trial proceedings); *Pansy v Borough of Stroudsburg*, 23 F.3d 772, 778 (3d Cir. 1994) (reversing trial court order denying news organizations’ request to intervene pursuant to Rule 24(b) in civil rights lawsuit brought against local government); *United States v. Antar*, 38 F.3d 1348, 1352 (3d Cir. 1994) (ruling on motion of news organizations that intervened in trial court proceedings to seek access to juror identities); *Dashner v. Riedy*, 2004 U.S. Dist. LEXIS 19980, at \*1 (E.D. Pa. Sept. 30, 2004) (stating that the court granted the motion of The Morning Call to intervene for the purpose of seeking access to sealed transcript of in camera testimony) (Sproul Decl., Ex. 21); *see also, e.g.,*

*Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n.25 (1982) (media and public “must be given an opportunity to be heard” on questions relating to access) (citation omitted); *Washington Post v. Robinson*, 935 F.2d 282, 284 (D.C. Cir. 1991) (newspaper successfully intervened to file motion seeking access to sealed records).

Thus, Rule 24(b)(2) provides the appropriate means for Court TV to bring before the Court its request for permission to televise the trial proceedings in this matter. *See, e.g., Hamilton v. Accu-Tek*, 942 F. Supp. 136, 137 (E.D.N.Y. 1996) (court grants motion of intervenor Court TV to televise courtroom proceedings); *Marisol A. v. Giuliani*, 929 F. Supp. 660, 660-62 (S.D.N.Y. 1996) (same); *Katzman v. Victoria’s Secret Catalogue*, 923 F. Supp. 580, 583, 589-90 (S.D.N.Y. 1996) (same).

**CONCLUSION**

For the foregoing reasons, Court TV respectfully requests leave to intervene and specifically requests permission to file the attached Unopposed Motion for Leave to Record and Telecast Trial Proceedings, and the Memorandum in support thereof, which explains in greater detail why the Court should exercise its discretion under Local Rule 83.1.1 to permit Court TV to televise the trial proceedings in this matter.

Dated: September 2, 2005

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

By: \_\_\_\_\_

Lee Levine\*

Gayle C. Sproul

Michael Berry

2112 Walnut Street, Third Floor

Philadelphia, Pennsylvania 19103

(215) 988-9778 (phone)

(215) 988-9750 (facsimile)

lee.levine@lskslaw.com

gayle.sproul@lskslaw.com

michael.berry@lskslaw.com

*Attorneys for Movant-Intervenor  
Courtroom Television Network LLC*

\* Petition for special admission filed on September 2, 2005.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>TAMMY KITZMILLER, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Civil No. 04-CV-2688</b>
	)	
<b>v.</b>	)	<b>Filed Electronically</b>
	)	
<b>DOVER AREA SCHOOL DISTRICT, et al.,</b>	)	<b>Hon. John E. Jones, III</b>
	)	
<b>Defendants.</b>	)	
	)	

**ORDER**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2005, after consideration of the Motion of Courtroom Television Network LLC to Intervene, and any response thereto, IT IS HEREBY ORDERED that the Motion is GRANTED, and Courtroom Television Network LLC is granted leave to intervene for the limited purpose of seeking leave to record and telecast the trial proceedings in this action.

BY THE COURT:


\_\_\_\_\_  
John E. Jones, III  
United States District Judge

**CERTIFICATE OF CONCURRENCE**

The undersigned attorney for Courtroom Television Network LLC (Court TV) hereby certifies as follows:

I advised plaintiffs' attorney, Witold J. Walczak, Esquire, of the foregoing Motion to Intervene and Motion for Leave to Record and Telecast Trial Proceedings and was told that Plaintiffs take no position on Court TV's motions and defer to the Court's judgment on this issue.

I advised defendants' attorney, Richard Thompson, Esquire, of the foregoing Motion to Intervene and Motion for Leave to Record and Telecast Trial Proceedings and was told that defendants do not oppose them.

  
\_\_\_\_\_  
Gayle C. Sproul, Esquire

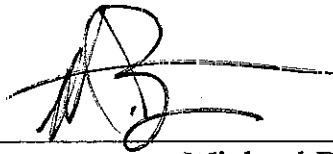
**CERTIFICATE OF SERVICE**

I, Michael Berry, hereby certify that on the 2nd day of September, 2005, I caused a true and correct copy of the foregoing Unopposed Motion of Courtroom Television Network LLC to Intervene to be served by upon the following counsel of record via Federal Express:

Witold J. Walczak  
American Civil Liberties Union of PA  
313 Atwood Street  
Pittsburgh, PA 15213

Richard Thompson  
Thomas More Law Center  
24 Frank Lloyd Wright Drive  
P.O. Box 393  
Ann Arbor, MI 48106

Ronald A. Turo  
Turo Law Offices  
28 South Pitt Street  
Carlisle, PA 17013



---

Michael Berry

*Kitzmilller, et al. v. Dover Area School District, et al.*  
*No. 04-CV-2688*

**TABLE OF EXHIBITS TO MOTION TO INTERVENE OF  
COURTROOM TELEVISION NETWORK LLC**

- |                  |   |
|------------------|---|
| <b>EXHIBIT 1</b> | <b>Proposed Motion to Record and Televisе Trial Proceedings</b> |
| <b>EXHIBIT 2</b> | <b>Proposed Motion to File an Oversized Brief</b>               |